IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 9TH MARCH 2007 / 18TH PHALGUNA 1928

Crl.MC.No. 567 of 2007()

CMP.4245/2006 of JUDL. MAGISTRATE OF FIRST CLASS COURT, VADAKKANCHERY

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PETITIONER:

BIJU, S/O.RAMAN, CHOLAYIL HOUSE,
CHERUTHURUTHY VILLAGE, TALAPPILLY TALUK.

BY ADV. SRI.P.SANTHOSH (PODUVAL)
SMT.R.RAJITHA

RESPONDENTS:

STATE OF KERALA, REP. BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U. NAZAR.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 09/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 567 OF 2007

Dated this the 9th day of March, 2007

ORDER

The petitioner claims to be the owner in possession of a lorry which was seized by the Cheruthuruthy police on 7/6/06 on the allegation that it was involved in illicit transportation of river sand. The petitioner applied for release of the vehicle to his custody under Sec.451 of the Cr.P.C. The learned Magistrate, by the impugned order, rejected the prayer of the petitioner for release of the vehicle to his custody. The learned Magistrate reckoned the fact that the vehicle was earlier involved in another crime as the reason to reject the prayer for return of the vehicle to the petitioner.

2. The learned counsel for the petitioner submits that the petitioner has waited patiently till now hoping that the proceedings will come to an end. But the proceedings have not come to an end. The vehicle stands exposed to sun and rain from 7/6/06. In these circumstances, it is prayed that to avoid further meaningless loss and deterioration of the

vehicle, the petitioner may be given custody of the vehicle subject to such appropriate terms and conditions which the court deems it proper.

3. Notice was given to the learned Public Prosecutor. The learned Public Prosecutor submits that except that the vehicle was involved in an earlier offence and had been released to the custody of the petitioner pending completion of the proceedings in the earlier crime, there is no other specific reason to insist that the vehicle must continue in custody of the court.

4. I must alertly remind myself of the decision in **Sunderbhai Ambalal Desai v. State of Gujarat** (AIR 2003 SC 638). The Supreme Court has frowned upon the unfortunate spectacle of vehicles and properties lying in the custody of the court exposed to sun and rain. Appropriate arrangements must be made to avoid such meaningless loss and deterioration of the valuable property. No other claimant has come forward. The proceedings have not been completed. In these circumstances, I am satisfied that subject to appropriate conditions which shall ensure the interests of justice the vehicle can be directed to be

returned to the petitioner.

5. In the result, this Crl.M.C. is allowed. The vehicle in question shall be released to the petitioner on the following terms and conditions:

(i) The petitioner shall produce all the documents before the learned Magistrate to satisfy the learned Magistrate that he is the owner entitled to possession of the vehicle in question.

(ii) The petitioner shall execute a bond for an amount equivalent to the value of the vehicle as may be determined by the learned Magistrate along with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

(iii) The petitioner shall in such bond undertake that the petitioner's vehicle shall not be used for the commission of any similar offences and that he shall be responsible to scrupulously ensure that stipulation. He shall further undertake that he shall pay such fine/penalty as may be imposed on him by the District Collector in accordance with law.

Sd/-

(R. BASANT, JUDGE)

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//true copy// P.S. To Judge